IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM

AND

THE HON'BLE MR. JUSTICE S. MANIKUMAR

W.A.No.954 of 2000

1. V. Palanisamy (died)
2. K.R. Thangaraj
3. K. Nadimuthu Mudaliar
4. C.G. Sampath Kumar
5. Ms. Srivani Visalakshi
6. Jayakumar
7. P. Sasikumar
8. P. Sureshkumar

(Appellants 6 to 8 are substituted as appellants in the place of deceased first appellant vide order of Court dated 23.8.2005 made in WAMP.2980 of 2005) .. Appellants

vs.

1. The State of Tamilnadu
   rep. by its Secretary to Government
   Adi Dravidar Tribal Welfare Department
   Fort St. George, Chennai 600 009.

2. The Special Tahsildar
   (Land Acquisition)
   Adi Dravidar Welfare
   Coimbatore 18.

3. R.Kuppusamy
   Secretary
   Tamil Nadu Arunthathiar Sangam.
   (R.3 impleaded as third respondent vide order of Court dated 19.1.05 made in WAMP.No.8032 of 2004) .. Respondents

Writ Appeal is filed under Clause15 of the Letters Patent against the order of the learned single Judge of this Court dated 27.04.2000 made in W.P.No.5322 of 1993.

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For appellants : Mr.R.Muthukumarasamy,Sr.counsel
for Mr.J.Pothiraj

For respondents: Mr.P.Wilson
Special Government Pleader

JUDGMENT

(Judgement of the Court was delivered by P. SATHASIVAM,J.)

Aggrieved by the order of the learned single Judge dated 27.04.2000 passed in Writ Petition No.5322 of 1993, the writ petitioners/land owners-persons interested, filed the above appeal.

2. Pending appeal, first appellant V. Palanisamy died, and his legal representatives were brought on record as appellants 6 to 8 by order dated 23.08.2005 made in WAMP.No.2980 of 2005. One R. Kuppusamy, Secretary, Tamil Nadu Arunthathiar Sangam, Coimbatore was also impleaded as third respondent as per order dated 19.01.2005 made in WAMP.No.8032 of 2004.

3. For convenience, we shall refer the parties as arrayed before the learned single Judge.

4. According to the petitioners, all of them own 2.78 acres of lands in S.F.No.344/part, Vilankurichi Village, Coimbatore (North) Taluk, Coimbatore by virtue of purchase under various sale deeds dated 19.07.1990. They joined together and decided to lay out the said 2.78 acres into house sites and submitted necessary application dated 16.08.1990 to the Coimbatore City Municipal Corporation. The Assistant Commissioner (ULT) Coimbatore, in his proceedings dated 31.10.1990, issued a certificate to the effect that the said lands are agricultural lands, not attracted by Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978. They also obtained certificate from the Special Tahsildar (LA) Housing Scheme III, Coimbatore to the effect that in respect of S.F.No.344/part of Vilankurichi Village, no notification under Section 4(1) of the Land Acquisition Act had been published. After verifying all the certificates, the Coimbatore City Municipal Corporation, directed the parties to remit a sum of Rs.22,300/- towards betterment charges for laying out the lands. They paid the said sum on 04.06.1991. The Local Planning Authority, Coimbatore, viz., District Collector had also recommended for the grant of approval to lay out the said lands. The petitioners also paid Rs.2,500/- towards service charges to the Director of Town and Country Planning, Madras-2. Finally, the Director of Town and Country

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Planning by its proceedings dated 21.08.1991, granted the approval for the lay out plan submitted by the petitioners in respect of the said lands.

5. While so, during first week of November, 1991, the original owners of the said lands informed the petitioners that an extent of 3.50 acres in S.F.No.344/part of Vilankurichi village which includes the above said lands of the petitioners were sought to be acquired under the Land Acquisition Act and they were called upon to file their objections if any before the second respondent. Accordingly, the petitioners submitted their objections dated 13.11.1991 to the second respondent. Thereafter, they came to know that notification under Section 4 (1) of the Act was published in Part II-Section 2(Supplement) of Tamil Nadu Government gazette dated 28.08.1991 to the effect that an extent of 3.50 acres of lands in S.F.No.344/part of Vilankurichi Village, Coimbatore (North) Taluk is needed for a public purpose to wit, for providing house sites to the Adi Draviders, who are residing in and around Vilankurichi Village and the second respondent was appointed to perform the functions of the Collector under Section 5A of the Act.

6. Mr.R.Muthukumarasamy, learned senior counsel for the petitioners mainly submitted that there was no proper publication in the locality. He also contended that in spite of objections by the petitioners, the second respondent has not conducted further enquiry, which is in violation of Rule 4(b) of the Land Acquisition Rules. Finally, he submitted that the petitioners had sold the approved plots to Labourers of Coimbatore Shri Ranga Villas Spinning and Weaving Mills for putting up construction for their shelters, and the purpose for which the lands were sought to be acquired was also for providing house sites to Harijans, and since both are public purposes, the land acquisition proceedings are liable to be dropped.

7. Mr.P.Wilson, learned Special Government Pleader, by placing records met all the contentions and submitted that there is no valid ground for interference with the order of the learned single Judge, and consequently, prayed for dismissal of the writ appeal.

8. We have carefully considered the materials placed and rival contentions.

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9. With regard to first contention regarding publication of Section 4(1) notification in the locality, in the counter affidavit filed by the Deputy Secretary to Government before the learned single Judge, it is stated that S.4(1) notification was published in the Tamil Nadu Government gazette dated 28.08.1991, in news dailies (i) Namadhu M.G.R. On 30.08.1991; and (ii) ... 30.08.1991; and in locality on 30.08.1991. In view of the

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specific information in the form of counter affidavit by the higher official of the Government and in the absence of reply affidavit controverting the said claim, we have no other option except to reject the said contention. It is seen that before the learned single Judge an argument was advanced that in the absence of specific date when the tom tom was made in the locality, it cannot be construed that there was proper local publication. The learned Judge, after finding from the records and the counter affidavit that publication was effected in the locality and the same was done properly and signatures of witnesses had been obtained and thereafter declaration was made on 22.09.1992, i.e., within a period of one year from 30.08.1991, rejected the said contention. On perusal of the specific averments in the counter affidavit and the records, we concur with the factual conclusion arrived at by the learned Judge and reject the above contention of the learned senior counsel for the petitioners.

10. Learned senior counsel appearing for the petitioners next submitted that Rule 4(b) of the Land Acquisition Rules has not been complied with. It is not in dispute that as per Rule 4 (b) if the person interested / land owner submits his objection, within 30 days from the date of last mode of publication under Section 4(1), in writing to the Collector, he is bound to forward the same to the requisitioning body and after getting remarks from it, it is incumbent on the part of the Collector to conduct further enquiry. When the very same contention was pressed into service before the learned single Judge, the learned Judge, after finding that since the authority who acquired the property and the requisitioning body are one and the same, there is no need to forward the objections to the Department, rejected the said contention. Further, the information in the counter affidavit shows that the petitioners raised objections at the time of 5-A enquiry and their objections were duly heard and proceedings under 5-A (2) were drawn and communicated to them. Thereafter, declaration under Section 6 of the Act was made by the Government and it was published in the gazette, dailies and in the locality by way of tom tom. Even if we accept that the requisitioning body / Department has to be heard, in view of the fact that the petitioners had submitted their objections only at the time of 5-A enquiry, it is not open to them to contend that Rule 4(b) has been violated. This is clear from the Full Bench decision of this Court rendered in W.P.Nos.17575 of 1995 and 4526 of 1996 dated 29.09.2006. Accordingly, we reject the said contention also.

11. Finally, the learned senior counsel for the petitioners vehemently contended that inasmuch as, after proper approval of lay out by the Director of Town and Country Planning, they sold the same by way of plots to workers of a spinning mill, which is also for a public purpose, the respondents are not justified in

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pursuing the present acquisition proceedings. The very same objection was also raised before the learned single Judge. In this regard it is useful to mention the particulars furnished in the counter affidavit. It is stated that the writ petitioners have only obtained technical approval of the lay out from the Director of Town and Country Planning on 21.08.1991, i.e., after 20 days from the date of approval of 4(1) notification by the Government. It is further submitted that the technical approval cannot be construed as final unless and until it is duly ratified by the Coimbatore Corporation after observing the formalities. It is the claim of the writ petitioners that they have fulfilled the requirements stipulated.

12. Regarding the sale of plots in favour of the workers, as rightly observed by the learned Judge, the petitioners had sold the plots to third parties and thereby they had made profit out of the sale, and hence, the same cannot be equated to any public purpose, such as providing house sites to Adi Draviders. Admittedly, it is not the case of the petitioners that they parted their land free of cost, to any one including the workers of the Mill. In such circumstances, we are in agreement with the conclusion arrived at by the learned single Judge and reject the said contention.

In the light of what is stated above, we do not find any valid ground for interference in the order of the learned single Judge, the above writ appeal is liable to be dismissed. Considering the fact that after purchase of the lands, the petitioners got approval from the Director of Town and Country Planning and sold the same by way of plots to workers of the Mill, the petitioners are permitted to make a representation to the Government highlighting their grievance within a period of four weeks from the date of receipt of copy of this order. If any such representation is made, the Government is directed to dispose of the same in one way or the other in accordance with law within a period of 12 weeks thereafter. With the above observation, the writ appeal is dismissed. No costs.

kh

Sd/-
Asst. Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   State of Tamilnadu
   Adi Dravidar Tribal Welfare Department
   Fort St. George, Chennai 600 009.

2. The Special Tahsildar
   (Land Acquisition)
   Adi Dravidar Welfare
   Coimbatore 18.

+ one cc to Mr.J.Pothiraj, Sr.No.46362.
+ one cc to Government Pleader,Sr.No.46565.

HPR (CO)
RSM/10.10.2006

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